

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: August 7, 2006 DEPT. 71 REPORTER A: CSR#

PRESENT HON. RONALD S. PRAGER REPORTER B: CSR#

JUDGE

CLERK: K. Sandoval

BAILIFF: REPORTER'S ADDRESS: P.O. BOX 120128
SAN DIEGO, CA 92112-4104

TENTATIVE RULING

IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)

The attached Court's ruling regarding Production of documents from Econ One Research, Inc. and Michael Harris, PhD. applies to all cases listed as follows:

4221-00020	UYEDA vs CENTERPOINT ENERGY INC
4221-00021	BENSCHIEDT vs AEP ENERGY SERVICES INC
4221-00022	COUNTY OF SANTA CLARA vs SEMPRA ENERGY
4221-00023	CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY
4221-00024	COUNTY OF SAN DIEGO vs SEMPRA ENERGY
4221-00025	OLDER vs SEMPRA ENERGY
4221-00026	CITY OF SAN DIEGO vs SEMPRA ENERGY
4221-00027	TAMCO vs DYNEGY INC
4221-00028	A L GILBERT COMPANY vs CORAL ENERGY RESOURCES LP
4221-00029	OBERTI WHOLESALE FOOD INC vs ENCANA ENERGY SERVICES INC
4221-00030	BROWN vs ENCANA ENERGY SERVICES INC
4221-00031	LOIS THE PIE QUEEN vs ENCANA ENERGY SERVICES INC
4221-00032	VITTICE CORPORATION vs ENCANA CORPORATION
4221-00033	COUNTY OF ALAMEDA vs SEMPRA ENERGY
4221-00034	THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC
4221-00035	SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY
4221-00036	ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY
4221-00037	OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY
4221-00038	TEAM DESIGN DBA TIMOTHY ENGELN INC vs RELIANT ENERGY INC
4221-00039	CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC
4221-00040	SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC
4221-00041	SHANGHAI 1930 RESTAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC
4221-00042	PODESTA vs ENCANA ENERGY SERVICES INC

4221-00043 NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY
4221-00044 COUNTY OF SAN MATEO vs SEMPRA ENERGY
4221-00045 BUSTAMANTE vs WILLIAMS ENERGY SERVICES
4221-00046 PABCO BUILDING PRODUCTS vs DYNEGY INC
4221-00047 BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC

The Court denies the motion for an order compelling compliance with the subpoena issued to Econ One, Inc. and Dr. Harris.

Here, defendant attempts to obtain records from Dr. Harris regarding the NYMEX matter based on defendant's reading of Dr. Harris' declaration of November 4, 2005. The most relevant portion of that declaration states:

In the course of my work on this case, the NYMEX matter, and my testimony before the FERC on the subject of gas price manipulation, I have reviewed a voluminous amount of material. Such material included, but was not limited to, testimony and analysis submitted in the FERC proceedings, reports and findings of FERC's staff, pronouncement of the Community Futures Trade Commission, and a vast amount of publicly available information on the subject. I understand discovery is underway and ongoing. Accordingly, I may supplement the opinions and conclusions set forth below as discovery proceeds.

(Pltf. Opp, Ex. A.) Dr. Harris' declaration indicates that he reviewed a voluminous amount of material in his work on this case. He also reviewed a voluminous amount of material in his work on the NYMEX matter. It does not state that he reviewed a voluminous amount of NYMEX materials in his work on the instant case.

Defendant cites to *National Steel Products Co. v. Superior Court*, (1985) 164 Cal.App.3d 476, 489 for the proposition that work an expert performed in another case is discoverable if the expert relies on it in formulating his opinion in the current case. In *National Steel* the plaintiff requested the court compel National Steel to produce the report of an expert witness who also served as a witness for National Steel in an unrelated litigation in New York. The court described the report as:

[A] technical engineering analysis of a metal building in New York. It was prepared in 1979 to assist counsel in prior New York litigation in which it was alleged that the building was, among other things, negligently designed, fabricated, and erected by petitioner. Real party in interest was not a party to that litigation. No portion of the report was ever disclosed during the New York litigation. Three pages of the calculations also prepared by the expert were disclosed, one page by court order, two pages voluntarily. The expert was neither deposed nor identified as a trial witness in the New York litigation. The New York litigation was settled prior to trial.

(*National Steel Products Co.*, *supra*, 164 Cal.App.3d at pp. 481-482.)

Defendant overlooks the language of *National Steel* where the court observed, "Not all work the potential expert witness has performed for counsel, however, is properly the subject of appropriate pretrial discovery." (*National Steel*, *supra*, 164 Cal.App.3d at p. 488.) Here, Dr. Harris' declaration does not indicate that he used the work he prepared in the NYMEX matter in his class certification declaration.